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ABSTRACT

Collective bargaining is a technology and not a philosophy or set of moral values. There seems to be an almost irresistible urge among authors of educational bargaining statutes to adopt the basic tenets of private-sector labor law. However, employment and collective bargaining are different in the public sector than in the private sector, and one should analyze the unique constraints present in public employment prior to wholesale adoption of the tenets of private-sector bargaining. An element that should be recognized in modern American labor relations is the accelerating rate of change in education, in educational administration, and in the psychology of organizations and individuals. The public sector is fundamentally different from the private sector in its organization, mission, purpose, operations, and reporting requirements. Yet many private-sector terms are being used in educational negotiations without questioning their validity. The basic question is whether collective bargaining will change to accommodate government or government will change to accommodate collective bargaining. (Author/JG)

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COLLECTIVE BARGAINING: AN EDUCATIONAL TECHNOLOGY

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Bargaining: a technology that is "here"

My basic predicate is collective bargaining is a technology and not a philosophy or set of moral values. The process of collective bargaining developed with the rise of human civilizations. Trading began and soon fruits and vegetables were traded for meat. As cities grew, ornaments were traded for food, and cattle for land. The history of commerce in the world is full of examples of negotiating, of trading off goods and services, of memorializing these exchanges in written agreements, and having these transactions binding upon the individuals by law.

In the 1930's, the United States government felt that "bargaining" was so important to business and society as a whole, that the National Labor Relations Act was passed. So, there is a statement of policy by the federal government of the United States in Section 1, National Labor Relations Act about:

> "encouraging the practice and procedures of collective bargaining. . .for the purpose of negotiating the terms and conditions of their employment. . ."

Importantly, the stated purpose of the law is to foster labor relations through the process of bargaining. Here is a statement by the government that private sector bargaining is so important that it will be protected by law and penalties are placed on parties to force them to comply with good faith bargaining.

There are similar statements of policy by state governments in those states which have enacted collective bargaining laws for public employees. Over 35 states have created some form of collective bargaining for public employees.

In summary, bargaining is a historical process. "Collective bargaining" has been an instrument of Federal and State governmental policy for decades. I believe it is a reasonable conclusion to state that "collective bargaining is here."

Basic concepts — applicability to education

First, there is a policy decision made that there shall be collective bargaining — and that some part of the educational system shall be governed by a labor contract.

> When this decision is made, the bargaining process has certain dynamics that operate. For example:
>
> Labor contracts are not "written".
> Labor contracts are negotiated.
> Labor contracts are negotiated by committees.
> Labor contracts are negotiated by two committees operating under disparate instructions — and they each must compromise in order to obtain a contract.
> There is a legal duty to bargain in good faith — and in good faith to attempt to reach a settlement and labor agreement.

Second, most experts and legislators use existing private labor law as a frame of reference for public sector labor relations.

This raises the question of how many of the concepts developed in the federal labor law and the cases of the National Labor Relations Board and American courts will be utilized in the public sector of educational negotiations.

Little deliberate analysis

There seems to be an almost irresistible urge to "adopt the basic tenets" of private sector labor law by authorities legislating or implementing educational bargaining statutes. In my opinion, there is little deliberate analysis of the "basic tenets" before they are thrust into the public sector by (a) statutory mandate, (b) administrative rule, or (c) case decisions.

Public sector — really — is different

Public sector employment and collective bargaining are different, in fact, than in the private sector. Unfortunately, this statement is "tainted" from its use by persons interested in prohibiting the use of the collective bargaining process in public employment. Nevertheless, I believe that it is a factual statement and one which must be coped with before there can be an orderly bargaining process in education.

The "differences" are constraints

One reason bargaining in the public sector is different from the private sector is constraints. Prior to the wholesale adoption of the basic tenants developed in private sector collective bargaining experience, one should analyze the constraints present in public employment unique to our private sector experience.

Money

An obvious and basic difference concerns money. A public employer, generally, has much less control over its revenues and the money available for negotiations than a private employer. A private employer can raise prices, cut dividends, or borrow money to provide wage settlements. A public employer receives much of its revenues from governmental entities (appropriating authorities) over which it has little control. Many public employers cannot borrow money for operations expenses (such as wage settlements). In short there are very real constraints on the ability of a public employer to raise money to meet wage demands — though there is a legal duty to bargain wage demands "in good faith".

Expenditure limitations

It is not uncommon to find legal limitations — generally in a statute or accounting regulation — on the types of expenditures a public employer can make. One recent example in Florida was whether or not public funds could be used to provide for a retroactive wage settlement. It took several legal opinions, including an opinion from the Attorney General to decide that such was a proper use of public funds. Retroactive settlements of wages has been an established practice in private sector bargaining for many, many decades. However, in the public sector it may be questionable or, possibly, "illegal".

Specific limitations

You will also find specific limitations in state laws and regulations of state boards of education. For example: limits on maximum sick leave days, requirements for certification for employment, limits on insurance benefits, establishment of specific holidays, are all subjects which are topics within the "scope of bargaining" developed in the private sector. However, many states have statutes governing these topics thereby constraining the parameters for settlement by negotiation.

Conflicting law provisions

There is a common practice of legislative bodies enacting bargaining laws in public employment, certainly in education, to impose a new set of laws on an existing regulated area without much attempt or effort to reconcile conflicting law provisions.

Historically, education has developed as a regulated government service. The systems of public education in America are generally established by law; educational funds and expenditures are regulated; entry and continued employment in education is under government control. This type of development of education has led to a large and complex network of laws, rules and regulations governing various educational activities.

Legislators enacting "collective bargaining laws" have seldom attempted to deliberately revise the existing regulatory laws in educational codes to conform to the new public sector labor requirements.

No common set of groundrules

In private sector, there has developed a common set of groundrules on such things as the scope of bargaining; i.e., which topics have to be negotiated.

The public sector is fond of using private sector terms such as "scope of bargaining" on wages, hours, and terms and conditions of employment. However, there is often violent disagreement on which topics have to be negotiated. Conflicting provisions of laws aggravate the situation rather than resolve the confusion.

Furthermore, seldom do legislatures enact a dispute resolution system for these questions — they are resolved on a case by case basis, i.e., you have to have a dispute to get an answer, e.g., a lot of disputes.

Resolution of conflicts

Collective bargaining is a process. It is at least an advocacy process and in some instances an adversary process. Each party has goals they are trying to achieve and each has a range of concessions available as quid pro quo items.

In a process where two parties are attempting to obtain concessions from each other and are facing demands on themselves, there are bound to be conflicts. Conflict and advocacy are inherent in the bargaining process.

Collective bargaining does not try to eliminate conflicts. In fact, it recognizes the existence of conflict as a dynamic in the relationship of the bargaining parties. The federal and most state collective bargaining laws do not attempt to eliminate conflict generated by the negotiations process.

What the bargaining process, contracts, and labor law do attempt is to contain the disputes to a reasonably orderly system of procedures designed to resolve the issues. In short, when you have a formal collective bargaining system, labor contracts, and labor laws you will learn to live with and to manage conflicts.

Personalities

Personalities play a role in labor relations. You can have the "best law, best contract, best grievance procedure" and have terrible labor relations. Labor relations is about people and the relationship between and among people. It is a people business. Accordingly, one must never overlook the personality factor. Sometimes ego, and ego attachment to a given issue, is a factor in labor relations.

As in most facets of life, ego issues are most difficult to deal with.

Rate of change

In my personal opinion, there is another element present in labor relations in modern America that ought to be more recognized than it is: an accelerating rate of change in education, in educational administration, and in the psychology of organizations and individuals.

I believe there is wisdom in some of the observations of Toffler in Future Shock. There is objective evidence of transiency novelty, informational overload and an increasing rate of change of "basics".

Drucker, in the Age of Discontinuity has persuasive arguments and data that organizations in our times are in a period of "discontinuity."

Zbrinski, in Between Two Ages, clearly identified the possibility that we may be dealing with three worlds in our society rather than one: the pre-industrial society, the industrial society, and the technological society. It is conceivable that a large public employer such as an educational institution or system could have a work force and professional staff that were simultaneously at the pre-industrial (low skilled), industrial (mechanized), and the technological (knowledgeable worker) levels.

> Query: how does one negotiate a single contract that is responsive to the demands of such a mixed constituency?
>
> Query: can the lack of a common reference and shared value system lead to low employee morale, militancy, and labor strife?

Labor relations in education should address queries such as this as well as the more standard queries associated with imposing a system of labor relations on public sector employers.

The basic question

In the opinion of this writer, the public sector is different than the private sector. It is different in fundamentals: organization, mission, and purpose; operations and reporting requirements. Yet many private sector terms are being used in educational negotiations without questioning the validity of the transfer. Undoubtedly some transfer is valid — but which concepts?

The basic question was posed by a special article appearing in Business Week magazine last summer:

> "Will collective bargaining change to accommodate government,
>
> or,
>
> will government change to accommodate collective bargaining?"

Not doomsday yet

The purpose of this paper is evocative. Certainly it is the time to debate and to decide the issues raised here — and once decided — time to act.

We have a sound viable educational system in America. We have a high level of professional educators and a generous amount of them, too. We have pupils: more of them than at any time in our history, and more "better ones", too. We have a direct and active involvement of citizens in education. Education is very much alive.

This is not the first serious and complex process that we have had to face. There are some signs that we are already beginning to do the things we need to do to continue to be effective in education.

This debate and this assembly is one sign. It is a sign that we are beginning to talk — to think — to grapple with issues, alternatives, and perhaps solutions. Debate is good if it sensitizes us to issues and constructive alternatives for solution. I believe that is our purpose here, and I hope that we are successful in this assembly. I do not believe that it is doomsday.